



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 121 OF 2005

(IN THE MATTER OF THE ESTATE OF ELIUD MUTHUNGU (DECEASED))

CATHERINE WANJIKU NDUNGU.....1ST APPLICANT

WILLIAM WAMBUGU NDUNGU.....2ND APPLICANT

-VERSUS-

DAVID NDIRITU NDUNG'U.....PROTESTER

JUDGMENT

The applicants are respectively the administratrix and administrator of the estate of the late Eliud Ndungu Muthungu, who died intestate on 4 September 2004. They obtained the Grant for administration of his estate on 22nd August 2005 and on 12 April 2006 they filed a summons for its confirmation. The protester was not satisfied with the scheme of distribution of the deceased's estate as proposed by the applicants and therefore he filed an affidavit of protest in that regard. It is the summons and the protest that are now the subject of this judgement.

According to the petition, the deceased was married more than once. Mary Wanjira Ndungu was his first wife but she predeceased him. Together they were blessed with five children all of whom survived the deceased. These children were named in the petition as follows:

1. Jane Wanjiku Gichuki
2. David Ndiritu Ndungu
3. Peter Karimi Ndungu
4. Eunice Wangechi Ndungu
5. Ruth Wanjiru Ndungu

The deceased married the first applicant after the demise of his first wife. The petition shows that there were seven children in the second house. These children are listed as follows:

1. James Kiruhi Ndungu
2. William Wambugu Ndungu
3. Hiram Kariuki Ndungu

4. Rahab Wambui Ndungu
5. Henry Ndiritu Ndungu
6. Peter Karimi Ndungu
7. Jane Muthoni Ndungu

The estate which, as noted, is at the heart of the present dispute comprises the following assets.

1. Title No. Thegenge/Gathuthi/347
2. Title No. Thegenge/Gathuthi/348
3. Title No. Thegenge/Gathuthi/794
4. Title No. Thegenge/Gathuthi/812
5. Title No. Thegenge/Gathuthi/848
6. Title No. Thegenge/Gathuthi/847
7. Title No. Gatarakwa/Gatarakwa/Block II/718
8. Title No. Gatarakwa/Gatarakwa/Block II/349
9. Title No. Gatarakwa/Gatarakwa/Block II/539
10. Plot No. 754 (original number 94/2)/II/MN
11. Plot No. 119 Section II M.N.
12. Plot No. 184 Ndathi Mugunda Company Ltd
13. Tuwatugawe Welfare Association Plot No. 754
14. Cows, Goat and Sheep
15. Standard Chartered Bank Account Nos. 0150140065400 & 0150145475800
16. Shares in Gathuthi Tea Factory.

In the summons for confirmation of Grant, the applicants proposed to distribute the estate as follows:

1. Title No. Thegenge/Gathuthi/794

To be shared equally between:

- (i) Peter Karimi Ndungu (Senior)
- (ii) David Ndiritu Ndungu

2. Title No. Thegenge/Gathuthi/347

Catherine Wanjiku Ndungu (absolute)

3. Title No. Thegenge/Gathuthi/848

Ruth Wanjiru Ndungu (absolute)

4. Title No. Thegenge/Gathuthi/812

William Wambugu Ndungu (absolute)

5. Title No. Thegenge/Gathuthi/847

William Wambugu Ndungu (absolute)

6. Title No. Gatarakwa/Gatarakwa/BLK. II/389

(i) James Kiruhi Ndungu	0.95 ha
(ii) Hiram Kariuki Ndungu	0.95 ha
(iii) Henry Ndiritu Ndungu.	0.95 ha
(iv) David Ndiritu Ndungu.	0.67 ha
(v) Peter Karimi Ndungu (senior)	0.67 ha
(vi) Peter Karimi Ndungu (junior)	0.63 ha
(vii) William Wambugu Ndungu.	0.312 ha
(viii) Ruth Wanjiru Ndungu.	0.30 ha

7. Title No. Gatarakwa/Gatarakwa/BLK II/718

To be shared equally between:

- (i) Rahab Wambui Ndungu
- (ii) Jane Muthoni Ndungu

8. Title No. Gatarakwa/Gatarakwa/BLK II/539

Peter Karimi Ndungu (junior) (absolute)

9. Kisauni Plot No. 184

Peter Karimi Ndungu (senior) (absolute)

10. Mishomoroni Plot No. 754 (original no. 94/2) 11/M.N.

David Ndiritu Ndungu (absolute)

11. Ndathi Mugunda Plot No. 184

Catherine Wanjiku Ndungu (absolute)

12. Shares in Gathuthi Tea Factory

Catherine Wanjiku Ndungu (absolute)

13. Standard Chartered Bank Account Nos. 0150145475800; 0150140065400

Catherine Wanjiku Ndungu (in trust for the school going children)

In his affidavit of protest, the protester swore that he was representing himself and also the rest of his siblings in the first house. He agreed with the applicants that the beneficiaries listed in their affidavit in support of the summons are the deceased's children from the first house. He also acknowledged those listed as the second house's children as the deceased's except for Peter Karimi Ndungu and Jane Muthoni Ndungu whom he omitted from the list; nevertheless, he later acknowledged them as the deceased's children too.

As far as the distribution of the estate is concerned, the protester faulted the applicants for having omitted **Title No. Thegenge/Gathuthi/850** and the shares in Nyeri Tea Growers Sacco Society Ltd from the deceased's estate yet they were part of his properties. That notwithstanding, he proposed the estate to be distributed as follows:

1. Title No. Thegenge/Gathuthi/347

David Ndiritu Ndungu (absolute)

2. Title No. Thegenge/Gathuthi/348

David Ndiritu Ndungu (absolute)

3. Title No. Thegenge/Gathuthi/794

Peter Karimi Ndungu (senior) (absolute)

4. Title No. Thegenge/Gathuthi/847

Peter Karimi Ndungu (senior) (absolute)

5. Title No. Thegenge/Gathuthi/848

Ruth Wanjiru Ndungu (absolute)

6. Title No. Thegenge/Gathuthi/812

To be shared equally between:

(i) David Ndiritu Ndungu

(ii) Joshua Kariuki Ndiritu

(iii) Beatrice Nyaguthii Karuri

7. Title No. Thegenge/Gathuthi/850

Joshua Kariuki Ndiritu (absolute)

8. Ndathi/Mugunda Plot No. 184

Ruth Wanjiru Ndungu (absolute)

9. Kisauni Plot No. 119

Peter Karimi Ndungu (senior) (absolute)

10. Mishomoroni Plot No. 754 (original no. 94/2) 11/M.N.

David Ndiritu Ndungu (absolute)

11. Shares in Gathuthi Tea Factory

To be shared equally between:

(i) David Ndiritu Ndungu

(ii) Peter Karimi Ndungu (senior)

12. Shares in Nyeri District Community Sacco

To be shared equally between:

(i) David Ndiritu Ndungu

(ii) Peter Karimi Ndungu (senior)

13. Title No. Gatarakwa/Gatarakwa/BLK. II/349

Catherine Wanjiku Ndungu (absolute)

14. Title No. Gatarakwa/Gatarakwa/BLK. II/539

Catherine Wanjiku Ndungu (absolute)

15. Title No. Gatarakwa/Gatarakwa/BLK. II/718

Catherine Wanjiku Ndungu (absolute)

16. Retirement Benefits

Catherine Wanjiku Ndungu (absolute)

17. Standard Chartered Bank Account Nos. 0150145475800; 0150140065400

To be shared equally among:

(i) David Ndiritu Ndungu

(ii) Jane Wanjiku Gichuki

(iii) Peter Karimi Ndungu (senior)

(iv) Eunice Wangechi Ndungu

(v) Ruth Wanjiru Ndungu

(vi) Catherine Wanjiku Ndungu

At the hearing, the protester reiterated that they were born seven in the first house and that his mother died in 1985. Two years after her death, more particularly in 1987, the first applicant was married to his father. It was his evidence that one of the reasons he protested against the scheme proposed by his step mother for distribution of the deceased's estate as proposed by his stepmother was because she was bent on inheriting all the money in the deceased's bank accounts yet she had earlier withdrawn a sum of Kshs. 189,000/= without his knowledge. Whatever is left, so it was his evidence, has to be shared equally between the two houses but taking into account that the second house has already benefited to the tune of the sum withdrawn by the 1st applicant.

The protester also testified that it was the wish of the deceased that the first house inherits **Title No. Thegeenge/Gathuthi/347** for the simple reason that it was on this parcel of land that the first wife was settled; she had her house there and it is where she was buried when she died. It was also the protester's evidence that **Title No. Thegeenge/Gathuthi/348** was also purchased by his late mother though he had no proof of such a purchase.

He agreed with the applicants that Ruth Wanjiru Ndungu can inherit **Title No. Thegeenge/Gathuthi/848**. He also agreed with them that he and his brother Peter Karimi Ndungu (senior) should inherit **Mishomoroni Plot No. 754 (original no. 94/2) 11/M.N.** and **Kisauni Plot No. 119** respectively.

He insisted on inheriting the shares at Gathuthi Tea Factory because the deceased had, allegedly, given him those shares.

As for **Title No. Thegeenge/Gathuthi/812**, it was his evidence that he had been given this land by the deceased; however, he conceded that this particular parcel of land was to be shared equally between his late father and his two brothers. He was seeking for the share due to his father.

He testified further that his stepmother should inherit all the Gatarakwa parcels of land listed in the applicants' schedule as items 6,7 and 8 because that is where she had been living since her marriage to the deceased until 1993 when she came to live on **Title No. Thegeenge/Gathuthi/347**.

Upon cross-examination, he admitted that he had forgotten to include the names of Peter Karimi Junior and Jane Muthoni in his list of the names of the deceased's children. He acknowledged them as his siblings but that they had died; Karimi Junior died when in class 7 while Muthoni died when she was in nursery. He also acknowledged that his stepmother was initially married according to Kikuyu customs but her marriage to the deceased was later solemnised in church in 1993. He concluded his evidence by questioning the scheme of distribution of the estate as proposed by the applicants because they left out his sisters, Jane Wanjiku Gichuki and Eunice Wangechi Ndungu from the list of beneficiaries.

Peter Nderitu Ndiangui (PW2) testified that he was the deceased's first cousin. It was his evidence that the deceased's first wife was married in 1961. She died in 1985 and in 1987 he married the first applicant whom he met at Mombasa where he was then working as a police officer. The first applicant had three children before this marriage. She initially lived in Gatarakwa. During this time, the deceased's first wife's sister, Hannah Waithera (PW4), was living with and taking of the children she left behind at Gathuthi in Tetu. She lived with the deceased from 1986 till 1993 when the 1st applicant moved to Gathuthi. The deceased would visit the applicant at Gatarakwa but come back at Gathuthi.

The first applicant came to live in Gathuthi in 1993 when the deceased fell ill. She was, however, to return to Gatarakwa once he became well. Unfortunately, the deceased's health never improved and he succumbed in September 2004. The land in Gatarakwa was 12 acres and the deceased purchased this land before he married the first applicant. Like the protester, he testified that the deceased held one parcel of land on his behalf and on behalf of his brothers who were from two of the three houses which the deceased's father had. He named the two brothers as Joseph Karuri and Joshua Kariuki Nderitu.

The witness further testified that he was 74 years old, at the time he testified, and at that age, he was old enough to know that according to Kikuyu customs, to which the deceased subscribed, once a person's wife died the house in which she lived was retained by her own children; in the event he married another

wife, he would build a separate house for her; she would not live in the first wife's house.

The deceased's first wife's sister, Hannah Wathira Kaburu (PW3) testified that she went to live in her sister's house when she died to take care of the children. It was her evidence that her sister had seven children with the deceased. She lived with her sister's children at their home since 1986 to 1993 and that she only left after the first applicant came to the home to take care of the deceased who was the ailing from diabetes.

Beatrice Nyaguthi (PW4) testified that the deceased was her husband's brother. Her husband was called, Joseph Karuri Muthanga and the two also had a brother called Joshua Kariuki Nderitu. It was her evidence that **Title No. Thegenge/Gathuthi/812**, that measures approximately one acre, belonged to the three brothers. The land was registered in the name of the deceased but he only held it for himself and for the benefit of his other two brothers.

Even then, she admitted that the deceased gave her **Title No. Thegenge/Gathuthi/849**; she only cultivates it but she lives on **Title No. Thegenge/Gathuthi/793** which was given to her by her father-in-law. She was aware that nobody lives on **Title No. Thegenge/Gathuthi/812** but that the first applicant grows tea on it. It was her evidence that her husband died in July 2003.

On her part, the petitioner testified that she married the deceased in 1987 and that before then, she was aware that the deceased had a wife who had died. She was also aware that the first wife left behind several young children whom she named as Ruth Wanjiru Ndungu, Eunice Wangechi Ndungu and Peter Karimi Ndungu. Other children died while she was married to the deceased; these were Charles Mureithi and Shelmith Muthoni.

At the time of her husband's death they were living on **Title No. Thegenge/Gathuthi/347**. She insisted that the estate should be distributed according to her proposed scheme. As far as **Title No. Thegenge/Gathuthi/812** is concerned, it was her evidence that there was a case in court involving the deceased; he was ordered to pay costs in that case but he was unable. The deceased paid the costs on his behalf and it is for that reason that he was given this particular parcel of land. She disputed the contention that the deceased held the land in trust for his brothers. Nonetheless, she admitted that she did not have any proof that the deceased paid the costs of any suit.

In answer to questions put to her during cross examination, the first applicant admitted that according to her proposal for the distribution of the deceased's estate her house would get a bigger share than the second house. She also admitted that she withdrew some money from the deceased's bank account for education of her three children who were in school; however, the withdrawal was on the authority of the court.

It was her evidence that **Title No. Thegenge/Gathuthi/850** which was alleged to have been omitted from the deceased's estate belonged to Joshua Kariuki and that she was not aware of any shares in Nyeri Tea Growers Sacco Society.

The applicant's son, William Wambugu Ndungu (DW2) testified that his mother lives on **Title No. Thegenge/Gathuthi/347** which is approximately 2.2 acres; it is next to **Title No. Thegenge/Gathuthi/348** which is approximately 0.32 ha but that there is no physical boundary between the two adjoining parcels. However, unlike **Title No. Thegenge/Gathuthi/348**, **Title No. Thegenge/Gathuthi/347** has tea growing on it.

These two parcels of land are separated from **Title No. Thegenge/Gathuthi/ 794**, which measures approximately 0.56 hectares, by a public road. This latter parcel has 2000 tea bushes and it is on the same land that the protester and his brother Peter Karimi Ndungu (senior live).

Title No. Thegenge/Gathuthi/848 is 0.65 hectares while **Title No. Thegenge/Gathuthi/847** measures approximately 0.22 hectares. It has tea bushes. **Title Nos. Thegenge/Gathuthi/847** and **848** are next to each other.

The bushes were divided into two equal shares. The 1st applicant is proposed to get 3731 bushes. As far as the acreage of land is concerned, the 1st house will receive 1.21 hectares while the second house is proposed to get 1.848 hectares. It was his evidence that the proposal for distribution of the estate was informed by where the deceased's two families are settled and, what he regarded as the 'alignment' of the land. It was also his evidence that they did not to mix the two families.

Title No. Thegenge/Gathuthi/812 was given to his father because of meeting his father's costs in High Court Civil Case No. 143 of 1994 (Nyeri).

As far as the Gatarakwa land is concerned, it was his evidence that it is to be shared out amongst the beneficiaries who had not received anything at Gathuthi. The Mombasa plots are commercial but they have ceded them to the first house because, so it was evidence, they are 'cursed'.

The amount in the bank was about Kshs. 600,000/= which he had no problem with both families sharing equally.

The witness testified further that **Title No. Thegenge/Gathuthi/793** and **Title No. Thegenge/Gathuthi/794** were subdivisions of **Title No. Thegenge/Gathuthi/346** which was initially registered in the name one Henry Muthigu Ngera. It was to go to the first house of his three houses. The three sons in that family were the deceased, Joshua Kariuki and Joseph Karuri. **Title No. Thegenge/Gathuthi/793** was allocated to Joseph Karuri while **Title No. Thegenge/Gathuthi/794** was allocated to the deceased.

His testimony closed the chapter on the evidence presented before court.

As far as the law is concerned, the law on division of an intestate's estate where he was married more than once is found in section 40 of the Law of Succession Act cap. 160. This section reads as follows:

40. (1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.

(2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.

The principle underlying this section has been explained to be equity and fairness in the distribution of an intestate estate between or among the houses where the deceased was married more than once. It has been so stated in the case of **Mary Rono versus Jane Rono & William Rono (2005) eKLR**.

Like in many cases of this nature, the primary question in the Rono case was the most ideal scheme to be adopted in the distribution the deceased's intestate between his two houses. It was urged, on the one hand, that each of the two houses should share the estate's assets and the liabilities equally. On the other hand, the court was urged to give the first house a larger share of the estate for, among other reasons, it contributed more to the acquisition of the estate. Waki, J.A., as he then was, read the leading judgment in which he vouched for equitable distribution of the estate. Omolo, J.A., added his voice to the judgment and commented as follows:

“I had the advantage of reading in draft form the judgment prepared by Waki, J.A., and while I broadly agree with that judgment, I nevertheless wish to point out that I do not understand the learned Judge to be laying down any principle of law that the Law of Succession Act, cap 160 of the Laws of Kenya, lays down as a requirement that heirs of a deceased person must inherit equal portions of the estate where such deceased dies intestate and that a judge has no discretion but to apply the principle of equality as was submitted before us by Mr Gicheru. I can find no such provision in the Act.”

The learned judge went further and stated of section 40 in these terms: -

“My understanding of that section is that while the net intestate estate is to be distributed according to houses, each house being treated as a unit, yet the Judge doing the distribution still has discretion to take into account the number of children in each house. If Parliament had intended that there must be equality between houses, there would have been no need to provide in the section that the number of children in each house be taken into account.

Nor do I see any provision in the Act that each child must receive the same or equal portion. That would clearly work an injustice particularly in a case of young child who is still to be maintained, educated and generally seen through life. If such a child, whether a girl or a boy were to get an equal inheritance with another who is already working and for whom no school fees and things like that were to be provided, such equality would work an injustice and for my part, I am satisfied that the Act does not provide for that kind of equality.”

I have followed this decision in every case where the question of distribution of an intestate estate amongst his houses, where he was married more than once, has arisen. One such decision where I recently applied it is in **High Court Succession Cause No. 650 of 2008, John Maina Gakuo & Another versus Veronica Wanjiku Gakuo (2020) eKLR** where I stated my understanding of the decision in the Rono case as follows:

Thus, the notion of equality of shares amongst the houses or the children, is not the decisive factor in the distribution of a net intestate estate in a polygamous family set-up; rather, it is equity, fairness and, ultimately the discretion of the court that count; exercise of that discretion in any particular way will, of course, take into account those factors that have been expressly specified in section 40(1) as necessary and, no doubt, the peculiar circumstances of each particular case. It does not, therefore, always follow that the house with the largest number of children will, as a matter of course, be entitled to the lion’s share of the estate.

I must add here that it may not be possible to distribute the estate with a scientific or mathematical precision but, broadly speaking, the court must be seen to have properly exercised its discretion in that task and if it does, the result will certainly manifest itself in how fair and equitable the estate has been distributed.

Coming back to the present case, the deceased's children are, more or less, evenly distributed between the two houses. It is true that the wife in the first house is deceased and, as a matter of fact, it was borne out in evidence that she predeceased the deceased; however, for purposes of distribution of the deceased's estate, her house would still be recognised as such because under section 3(1) of the Law of Succession Act, a 'house' is defined to mean” *a family unit comprising a wife, **whether alive or dead** at the date of the death of the husband, and the children of that wife”(Emphasis added).*

From what I gather, all the deceased's children and, who for that very fact, are eligible for a share of his estate, are adults. There was evidence that the youngest of them were in either in school or in colleges about 15 years ago. It was never suggested at the time of trial that any of them was still in school or college or, besides the inheritance rights to which they are all entitled, was in need of any particular support from the estate to get them on their feet.

Also to be borne in mind is the fact that the two families have been settled on particular parts of the deceased's estate for many years and therefore, in balancing out their rights, the court has to consider whether it is fair and equitable to have them uprooted from one part of the estate and settled elsewhere on the same estate under the guise of distribution of the estate.

No expert opinion was given on whether any particular part of the estate is more valuable or productive than the other although the parcels of land in Thegenge Gathuthi registration section appear to have attracted competing interests from both houses. Going by the testimony of William Wambugu Ndungu, some of these parcels have tea growing on them and, for that reason, are income generating, hence the

interest from both houses.

The deceased's first wife was buried on a particular parcel of land; her children have expressed the desire to access her house which, apparently, is on the same parcel of land where she was buried. I note that their evidence that they are entitled to their late mother's house in accordance with the Kikuyu customs, was not controverted.

It is also worth noting that there were also points of agreement; for instance, it was common ground between them that Ruth Wanjiru Ndungu from the first house could inherit **Title No. Thegenge/Gathuthi/848**. They were also in agreement that the protester and his brother Peter Karimi Ndungu (senior), also from the first house, could inherit the coast properties, **Mishomoroni Plot No. 754 (original no. 94/2) 11/M.N. and Kisauni Plot No. 119**. The applicants also proposed that both the protester and his brother Karimi (senior) could inherit **Title No. Thegenge/Gathuthi/794**, although the protester proposed to have it devolve upon his brother Karimi (senior) as its absolute proprietor. Either way, the 2nd house has ceded this particular parcel to the 1st house.

I also understood William Wambugu Ndungu, the 1st applicant's son, to say that the 2nd house is open to sharing with the first house the money in the bank. His house does not also lay any claim on shares in Nyeri Tea Growers Sacco Society Ltd which the 1st applicant doubted whether they exist, in any event. The protester, on his part, has ceded any claim on the deceased's retirement benefits, if any, to the 1st applicant.

With this consensus, the only properties in contention are the Gathuthi properties comprising **Title No. Thegenge/Gathuthi/812; Title No. Thegenge/Gathuthi/847; Title No. Thegenge/Gathuthi/348; and Title No. Thegenge/ Gathuthi/ 347**. Others are the Gatarakwa properties comprising **Title No. Gatarakwa/Gatarakwa/BLK. II/349; Title No. Gatarakwa/Gatarakwa/BLK. II/539 and Title No. Gatarakwa/Gatarakwa/BLK. II/718**. Apart from these parcels of land, parties also do not seem to agree the distribution of the shares in Gathuthi Tea Factory.

One other thing, a provision has been made for Peter Karimi Ndungu (junior); I understood the protester to say that he died but, considering that the applicants have allocated him part of the estate and, in the absence of any evidence of his death, I will proceed on the presumption that he is alive.

That notwithstanding, taking all the factors I have mentioned into account, and considering the justification offered by the applicants, I find their proposed scheme for distribution of the Gatarakwa properties to be more acceptable. Accordingly, that part of the deceased's estate shall be distributed as proposed by the applicants.

As far as the Gathuthi properties are concerned, I am persuaded that the first house should retain their mother's house and have unrestricted access to her grave. This then means that the first house must have a share of **Title No. Thegenge/Gathuthi/347**. The applicants' argument that the two families should not mix is untenable; at any rate, if they can mix in the Gatarakwa property, I do not see why they cannot mix in the Gathuthi property.

According to the evidence available, this parcel of land is 2.2 acres. It is large enough to be divided between the two families. The first house shall have 1.1 acres of this land; their portion of the land shall cover, as much as it is practicable, that part of the land where their late mother's house and grave are.

In view of this adjustment to the applicants' proposed scheme of distribution, **Title No. Thegenge/Gathuthi/812; Title No. Thegenge/Gathuthi/847; and, Title No. Thegenge/Gathuthi/348** shall devolve to their respective beneficiaries as proposed by the applicants.

The money in the standard Chartered Bank shall be shared equally between the two houses. The 1st applicant shall have 50% of the money while the balance shall be shared equally amongst the deceased's children in the 1st house. Nonetheless, I agree with the protester that the amount withdrawn for benefit of children in the second house ought to be taken into account if the objective of equal distribution of this

particular asset has to be achieved. The shares in Gathuthi Tea Factory shall be shared on the same equal terms. If there be any retirement benefits due to the deceased's estate, the same shall devolve upon the 1st applicant.

Before I conclude, I am minded that Beatrice Nyaguthi Karuri laid a claim on **Title No. Thegenge/Gathuthi/812** on the basis that the deceased held this particular parcel of land for himself and in trust for his two other brothers one of whom was her deceased husband. I find her claim to be baseless for three reasons; firstly, the registration of that land shows that the deceased is registered as its absolute proprietor; there's nothing to suggest that he held it in trust for any of his brothers or any other person for that matter. Secondly, there was no evidence or any suggestion that Beatrice's husband made any claim on this parcel of land in his lifetime. Finally, no claim has been lodged in a court of competent jurisdiction for a declaration of trust in favour of Beatrice as a representative her late husband's estate.

In any event, she testified that the deceased gave her **Title No. Thegenge/Gathuthi/849** while her father-in-law gave her **Title No. Thegenge/Gathuthi/793**; she enjoys exclusive possession and use of these two parcels; it is worth noting that neither of them has been listed as part of the deceased estate, available for distribution amongst his heirs.

So, in summary, and for the sake of clarity, the deceased's estate is hereby distributed and shall devolve upon his heirs as follows:

1. Title No. Thegenge/Gathuthi/794

To be registered in the names of the following as owners in common in equal shares:

- (i) Peter Karimi Ndungu (senior)
- (ii) David Ndiritu Ndungu

2. Title No. Thegenge/Gathuthi/347

(a) 1.1(one decimal one) acre to be registered in the following names as owners in common in equal shares:

- (i) Jane Wanjiku Gichuki
- (ii) David Ndiritu Ndungu
- (iii) Peter Karimi Ndungu (senior)
- (iv) Eunice Wangechi Ndungu
- (v) Ruth Wanjiru Ndungu

(b) 1.1 acres shall be registered in the name of the person below as the absolute proprietor:

Catherine Wanjiku Ndungu

3. Title No. Thegenge/Gathuthi/848

Ruth Wanjiru Ndungu (absolute)

4. Title No. Thegenge/Gathuthi/812

William Wambugu Ndungu (absolute)

5. Title No. Thegenge/Gathuthi/847

William Wambugu Ndungu (absolute)

6. Title No. Thegenge/Gathuthi/348

Peter Karimi Ndungu (junior)(absolute)

7. Title No. Gatarakwa/Gatarakwa/BLK. II/349

Shall be subdivided and transferred to the respective beneficiaries as follows:

- (i) James Kiruhi Ndungu.....0.95 hectares
- (ii) Hiram Kariuki Ndungu.....0.95 hectares
- (iii) Henry Ndiritu Ndungu.....0.95 hectares
- (iv) David Ndiritu Ndungu.....0. 67 hectares
- (v) Peter Karimi Ndungu (senior).....0.67 hectares
- (vi) Peter Karimi Ndungu (junior).....0.63 hectares
- (vii) William Wambugu Ndungu.....0.312 hectares
- (viii) Ruth Wanjiru Ndungu.....0.30 hectares

8. Title No. Gatarakwa/Gatarakwa/BLK. II/718

To be registered in the names of the following as owners in common in equal shares:

- (i) Rahab Wambui Ndungu
- (ii) Jane Muthoni Ndungu

9. Kisauni Plot No. 119 Sect. 1 M.N

Peter Karimi Ndungu (senior) (absolute)

10. Mishomoroni Plot No. 754 (original no. 94/2) 11/M.N.

David Ndiritu Ndungu (absolute)

11. Ndathi Mugunda Plot No. 184

Catherine Wanjiku Ndungu (absolute)

12. Shares in Gathuthi Tea Factory

(a) 50% of the shares or the value thereof to be transferred and shared equally amongst the following persons:

- (i) Jane Wanjiku Gichuki
- (ii) David Ndiritu Ndungu

(iii) Peter Karimi Ndungu (senior)

(iv) Eunice Wangechi Ndungu

(v) Ruth Wanjiru Ndungu

(b) 50% of the shares to be transferred in the name of Catherine Wanjiku Ndungu (absolute)

13. Nyeri Standard Chartered Bank Account Nos. 0150145475800; 0150140065400

a) 50% of the funds in the accounts plus the sum of Kshs. 82,437.5 being half of the sum of Kshs. 165,475/=which was withdrawn for the benefit of some of the children in the 2nd house vide the order made by this court on 7 October 2005, shared equally amongst the following persons:

(i) Jane Wanjiku Gichuki

(ii) David Ndiritu Ndungu

(iii) Peter Karimi Ndungu (senior)

(iv) Eunice Wangechi Ndungu

(v) Ruth Wanjiru Ndungu

b) 50% of the funds in the accounts less the sum of Kshs. 82,437.5 being half of the sum of Kshs. 165,475/=which was withdrawn for the benefit of some of the children in the 2nd house vide the order made by this court on 7 October 2005, to be given to Catherine Wanjiku Ndungu.

14. Retirement benefits

If any, to devolve upon Catherine Wanjiku Ndungu

15. Nyeri Tea Growers Sacco Society Ltd Shares

To be shared equally between the following persons:

(i) David Ndiritu Ndungu

(ii) Peter Karimi Ndungu (senior)

The Grant made to the applicants is confirmed in those terms. Parties will bear their respective costs. It is so ordered.

Signed, dated and delivered this 16th day of June, 2020

Ngaah Jairus

JUDGE